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FISCAL IMPACT STATEMENT

LS 7764

BILL NUMBER: SB 502

NOTE PREPARED: Mar 13, 2007

BILL AMENDED: Mar 12, 2007

SUBJECT: Streamlined Sales Tax Conformance.

FIRST AUTHOR: Sen. Kenley

FIRST SPONSOR: Rep. Kuzman

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *Streamlined Sales and Use Tax Agreement Conformance:* This bill provides various Sales and Use Tax definitions, changes, and additions to conform with the Streamlined Sales and Use Tax Agreement. This bill repeals an obsolete provision concerning software that may be used concurrently in more than one jurisdiction.

Sales Tax on Aircraft Leases: The bill specifies that a person is a retail merchant making a retail transaction when the person: (1) leases an aircraft to another person; and (2) provides flight instruction services to the lessee during the term of the lease. The bill also provides that the amount of gross retail income attributable to the retail transaction is the amount charged by the lessor for the lease of the aircraft used in conjunction with the flight instruction services provided to the lessee.

Multistate Tax Commission: The bill requires the Governor and the Commissioner of the Department of State Revenue to take the steps necessary for Indiana to become a member of the Multistate Tax Commission and the Multistate Tax Compact.

Effective Date: Upon passage; January 1, 2008; July 1, 2008.

Explanation of State Expenditures: This bill will increase the administrative costs of the Department of State Revenue (DOR). The DOR will have to amend the Sales Tax forms, procedures, and rules, as well as update computer software.

Erroneous Software Data: The DOR will also incur administrative expenses by being required to review and certify the software submitted to the governing board of the SSTA.

It is estimated that the provisions of this bill can be implemented within the existing level of resources available to the DOR.

(Revised) *Multistate Tax Commission*: This provision of the bill will increase state expenditures by between \$30,000 and \$275,000 in FY 2008 and FY 2009. The amount of the increase in expenditures will ultimately depend upon the type of membership recommended by the DOR. The bill appropriates funds sufficient to pay for membership dues, as well as any cost incurred by the DOR related to becoming a member of the MT Compact.

The bill requires the Governor and the Commissioner of the DOR to take the steps necessary for Indiana to become a member of the Multistate Tax Commission (MTC) and the Multistate Tax Compact (MT Compact). The bill specifically requires that by September 1, 2007, the Commissioner of the DOR to submit a report to the General Assembly identifying the statutory changes and appropriations necessary to participate as a "full member" of the MTC and the MT Compact.

Explanation of State Revenues: (Revised) The overall impact of this bill on Sales Tax collections is indeterminable.

Streamlined Sales and Use Tax Agreement Conformance: There will be an indeterminable impact on Sales Tax collections due to the provisions in the bill related to conforming Indiana's Sales Tax laws to the Streamlined Sales Tax Agreement (SSTA) as amended on December 14, 2006. It is estimated that these conformance provisions of this bill will not have a significant overall impact on Sales Tax collections.

Telecommunications Definitions & Sourcing: The bill adds a definition of "ancillary services" and amends the current definition of "telecommunication services". These provisions, along with the amendment to the actual section of the code concerning telecommunication sourcing, will have an impact to the extent that services are sourced to a jurisdiction that is different than how the services would have been sourced under current law.

The bill's definition of telecommunication services is estimated to be an expansion of the current definition. The major change to the definition is specifically including voice over internet protocol (VoIP) services in the definition of telecommunication services if the VoIP service is classified as an enhanced or value added service by the FCC. The bill also provides that a person is NOT a retail merchant making a retail transaction when the person furnishes or sells telecommunication services that include a transmission, conveyance, or routing using a computer application regardless of whether the services are referred to as VoIP.

The bill also defines prepaid wireless services for purposes of the sourcing rules used under the SSTA. This provision will only have an impact to the extent that it will be sourced to a different jurisdiction under the bill versus under current law.

Seller Liability for Exempt Purchases: This bill also provides that if a seller accepts an incomplete exemption certificate, the seller can be relieved of liability for the Sales Tax on that purchase if the seller obtains:

- (1) a completed exemption certificate; or
- (2) the data needed to complete the certificate;

within 90 days after the date of sale. This provision could impact Sales Tax collections to the extent that the DOR could impose liability on a seller under current law, but may not impose liability under

the bill.

The bill also provides that if the DOR request a seller to substantiate an exemption where an incomplete certificate was accepted by the seller, that seller has 120 days to obtain a completed certificate or prove the exemption by other means.

Erroneous Software Data: The bill provides relief from liability for a purchaser, the governing board, and member states if the liability is a result of a transaction not being classified correctly in the certified automated system set up by the certified service provider. The bill also provides that this relief from liability is *NOT* allowed for certified service providers. The bill allows 10 days for the service provider to update any mistakes reported by the DOR. These provisions will only impact Sales Tax collections to the extent that a person that would have been liable under current law is no longer liable. Also, there will be no impact on collections if the DOR is able to collect the liability from a certified service provider.

(Revised) *Sales Tax on Aircraft Leases:* The provisions of the bill relating to Sales Tax on aircraft leases will cause an indeterminable decrease in Sales Tax collections. The impact will ultimately be determined by the number of aircraft in Indiana which are leased by people who provide flight instruction services.

The bill specifies that a person is a retail merchant making a retail transaction when the person: (1) leases an aircraft to another person; and (2) provides flight instruction services to the lessee during the term of the lease. The bill also provides that the amount of gross retail income attributable to the retail transaction is the amount charged by the lessor for the lease of the aircraft used in conjunction with the flight instruction services provided to the lessee.

(Revised) *Background:* Sales Tax revenue is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

The Streamlined Sales Tax Project addresses the problem of collecting Sales and Use Taxes on goods purchased via the internet, catalogs, and other remote sellers. The project seeks to remove the burden of collecting Sales Taxes from remote sellers through a simplification of state Sales and Use Tax structures, which would be applied in a more uniform way. As of January 18, 2007, 45 states had participated in the Streamlined Sales Tax Project through legislative enactments, executive orders, or negotiations.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Governor.

Local Agencies Affected:

Information Sources: <http://www.streamlinedsalestax.org/>

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